

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION

In the matter of:	)	Complaint No. 01-76
	)	for
Brookfield Homes	)	Administrative Civil Liability
3090 Bristol Street, Suite 200	)	
Costa Mesa, Ca 92626	)	
	)	
Attn: Bart Hayashi	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Brookfield Homes is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c)(2) of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within sixty days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on July 20, 2001, City Council Chambers, City of Corona. Brookfield Homes or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The storm water runoff from Brookfield Homes' construction site, Tract 15681, located in the City of Tustin is regulated under the State's General Permit for Storm Water Runoff Associated with Construction Activities, Order No. 99-08-DWQ, NPDES No. CAS000002 (General Permit), WDID No. 8 30S310330.
5. Brookfield Homes is alleged to have violated Provisions A.3, B.2, C.2.and C.5, of the General Permit. Brookfield Homes failed to properly implement effective best management practices (BMPs) and discharged pollutants to waters of the United States from the construction site. Pursuant to Water Code Section 13385 (a)(2), civil liability may be imposed for the preceding violations.

6. This complaint is based on the following facts:

- a) During the period of October 11, 2000 to January 11, 2001, City of Tustin (City) inspectors routinely inspected Brookfield Homes, Tract 15681. During these inspections, the City's NPDES coordinator and building inspector noted several major violations of the State's General Permit which included the discharge of sediment-laden water to the storm drain, inadequate BMPs for erosion/sediment controls, and poor housekeeping. Brookfield Homes did not develop and implement an appropriate Storm Water Pollution Prevention Plan (SWPPP) and had not trained site personnel. Based on these findings the City issued a Stop Work on October 11, 2000, a Notice of Noncompliance on October 12, 2000, and an Administrative Compliance Order on January 11, 2001, to Brookfield Homes.
  - b) On January 12, 2001, Board staff and inspectors from the City inspected the site. There were inadequate sediment/erosion controls implemented at the site. Several major erosion rills were observed on the bare slopes. Large amounts of sediment were noted in the streets and there was evidence that several catch basins had been overwhelmed and that sediment-laden runoff had entered the local storm drain system. Based on rainfall intensity, the runoff coefficient, and the surface area for the construction site, the calculated runoff volume for the storm event on January 10-11, 2001 is 35,000 gallons. At that time, staff instructed Brookfield to improve the BMPs to include an effective combination of erosion and sediment control. During the inspection, it was noted that several catch basin inlet faces were blocked by filter fabric. Staff expressed concerns with this BMP because of the extremely low infiltration rate observed and the potential for flooding and the lack of appropriate erosion/sediment control measures. These concerns were discussed with representatives of Brookfield Homes. Finally, the Storm Water Pollution Prevention Plan was not site specific. On January 22, 2001, Board staff issued a Notice of Violation to Brookfield Homes that outlined the violations including the lack of appropriate erosion/sediment control measures.
  - c) On February 14, 2001, Board staff received a complaint from the City regarding a discharge of 40,000 gallons of sediment-laden water to catch basins located at the site. The City reported that the discharge was due to inadequate erosion/sediment control BMPs and the removal of filter fabric from the catch basin inlet face on a cul-de-sac which serves as a major drainage point for the project, during a rain event on February 12, 2001. When staff spoke to a representative for Hunsaker and Associates, consultant to Brookfield Homes, it was indicated that filter fabric was removed because it had blocked off the catch basin and had not allowed the water to drain and that the resultant flooding threatened adjacent foundations. The filter fabric was one of the sediment control measures installed at the site.
7. Section 13385 (a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385 (c) provides that a regional board may impose administrative civil liability in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per

gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. The site discharge was calculated to be 75,000 gallons based on the total acreage draining to that cul-de-sac and the locally recorded rainfall data for the rain events on January 10-11, 2001 and February 12, 2001.

8. Pursuant to Section 13385(c), Brookfield Homes is civilly liable in the amount of \$30,000 (\$10,000 per day for three days of violation) and an additional \$740,000 based on flow ( $75,000 - 1,000 = 74,000$  gallons @\$10 per gallon) for the violation cited in Paragraph 6, above. The total maximum assessment is \$770,000.
9. Regional Board staff spent a total of 12 hours investigating this incident (@\$70 per hour, the total cost for staff time is \$840). Brookfield Homes saved approximately \$5,000 by not developing and implementing an appropriate SWPPP, including adequate BMPs for erosion/sediment controls. These factors were considered in assessing the penalty indicated in Paragraph 10, below.
10. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes that administrative civil liability be imposed on Brookfield Homes by the Board in the amount of \$15,840.00 for the violations cited above.

#### WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver and return it, together with a check or money order payable to the State Water Resources Control Board for the amount of civil liability proposed in Paragraph 10, above, to:

Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3339

If you have any questions, please contact Aaron Buck (909) 782-4469, Mark Smythe at (909)782-4998 or Michael Adackapara (909) 782-3238, or contact the Regional Board's staff counsel, Ted Cobb, at (916) 341-5171.

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Date

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Gerard J. Thibeault  
Executive Officer

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	)	
<u>Attn: Bart Hayashi</u>	)	

# WAIVER OF HEARING

I agree to waive Brookfield Homes right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. 01-76. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$15,840.00. I understand that I am giving up Brookfield Homes' right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
for Brookfield Homes

California Regional Water Quality Control Board  
Santa Ana Region

July 20, 2001

**ITEM:** 14

**SUBJECT:** Administrative Civil Liability Complaint No. 01-76, Brookfield Homes,  
Orange County

Regional Board staff is currently negotiating with the discharger and the discharger has indicated that it wants to settle the matter by waiving its right to a hearing and by paying the assessment. In case the matter is not settled in a timely manner, staff will prepare a Staff Report for the item and will mail it separately to all interested parties prior to the Board meeting.